



Fair Political Practices Commission

428 J Street, Suite 620, Sacramento, CA 95814

www.fppc.ca.gov

NEWS RELEASE

For Immediate Release:
September 23, 2003

Contact: Sigrid Bathen
(916) 322-7761

FPPC responds to Superior Court ruling in *Johnson v. Bustamante* *Past commission advice 'clear and consistent'*

The Fair Political Practices Commission today issued the following statement in response to yesterday's (Sept. 22) ruling by Sacramento Superior Court Judge Loren McMaster in the case of *Johnson v. Bustamante*:

As the state agency charged with the implementation and defense of the Political Reform Act, the Fair Political Practices Commission received with great interest the Superior Court's ruling in *Johnson v. Bustamante*. Important factual and legal issues are implicated in the circumstances that gave rise to the case, as the commission observed in its letter of Sept. 16 to Judge McMaster, which the court requested. The FPPC is not a party in the case, which was filed by Sen. Ross Johnson (R-Irvine).

In the commission's view, the primary questions at issue in the matter were: 1) whether candidates can raise funds in excess of the Proposition 34 limits into a pre-Prop. 34 campaign committee, and 2) whether a candidate can raise funds for a post-Prop. 34 election into a committee formed for a pre-Prop. 34 election without regard to the Prop. 34 contribution limits.

On the first question, the commission in 2001 adopted a regulation providing that contribution limits did not apply retroactively to pre-Prop. 34 committees. In its ruling, the court disagreed with the commission's 2001 determination. With regard to the legal issues addressed in the court's decision, the commission will evaluate the opinion's impact on the status of the various laws and regulations.

On the second question, whether a candidate can raise funds for one election into a committee established for another election, the ruling states that commission pronouncements, "through advice letters, fact sheets, and other public statements" have given "often conflicting" advice and that there has been "no clear and straightforward interpretation" of the relevant laws.

Because the commission was not a party to the case, it was not possible for the commission's attorneys to comment at the hearing on the matter nor answer any clarifying questions from the court. However, as stated to the court in its letter brief submitted to the court at the court's request, it has *always* been the commission's advice that the law does *not* create the

-more-

ability for candidates to raise funds intended for one election into a committee established for a different election:

- On October 25, 2002, the commission issued an advice letter cautioning that “under the campaign bank account rules a candidate is prohibited from raising funds for the 2006 election, through a committee and campaign bank account established for a 2002 election.” (*Fishburn* Advice Letter, No. A-02-271.) The advice letter is a matter of public record.
- In December of 2002, the commission adopted a Proposition 34 Fact Sheet, 34-01, Volume 3, which reiterated the *Fishburn* advice, stating that candidates could not solicit contributions into a 2002 statewide committee for the purpose of running for reelection in 2006 or for another office. (Ques. 4.)
- This determination was affirmed yet again in the commission’s press release, dated Aug. 28, 2003, at point number 2: “Since implementing Proposition 34 in 2001, the commission has advised that state candidates may not solicit contributions into a pre-Proposition 34 committee for the purpose of using those funds in a post-Proposition 34 election.”

Most recently, the commission reiterated this conclusion in its letter to the Superior Court in this matter, in which the commission stated on page three:

“There is no prohibition on raising contributions in excess of outstanding net debts under section 85316 or in excess of \$21,200 per person into a committee established for an election held before November 6, 2002, *if* there is no violation of any other provision of the Act. In evaluating whether any other provision has been violated, however, it would be important to determine whether the funds were solicited into a pre-34 committee with the intent of using them for the 2003 election. Should a careful examination of the facts demonstrate that this is the case in this circumstance, raising funds for one election into a committee established for a different election is not consistent with section 85201, which requires that campaign funds are raised into the account established for that election. Such conduct would constitute a violation of the Act at the time the contributions are made and an evasion of the contribution limits for the 2003 gubernatorial race.”

Thus, in four opportunities to comment on the factual scenario at issue in this case, the commission has provided clear and consistent advice. If any candidate in this election had sought written advice with respect to the candidate’s duties and obligations under the Act, he or she would have been advised consistent with each of the instances described above.

###